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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH : NEW DELHI

OA No.1078/88

Date of decision: 24.9.1993

Shri Bir Singh

Vs. Commissioner of Police, Delhi

CORAM:

Hon'ble Shri C.J. Roy, Member (J)

Hon'ble Shri B.K. Singh, Member(A)

For the applicant .. Shri P.P. Khurana, Counsel

For the respondents .. Shri Ashok Kashyap proxy

counsel for Shri G.C.Lalwani

JUDGEMENT(ORAL)

(Delivered by Shri C.J.Roy, Hon'ble Member(J))

The applicant is an Assistant Sub-Inspector of Police in Delhi Police and he has claimed a relief that the order dated 13.8.87 at Annexure A-7, imposing a penalty of stoppage of increment temporarily for a period of one year may be quashed.

The facts of the case are that the applicant while on duty in the police control room alongwith Head Constable Dilbagh Singh on the night of 4th/5th July, 1985, noticed a truck no.UTG 9495 going to Azad Mandi was carrying two persons sitting on the tool box in a dangerous position. In order to save their life, Shri Dilbagh Singh and the applicant stopped the truck and advised the persons sitting on the tool box to get down.

[Signature]

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In the meantime, a traffic party headed by an Inspector of Police, stopped his van to enquire the matter. The applicant narrated what has happened but the Inspector, it is alleged, not satisfying with the applicant lodged a false report against him on the basis of which the applicant and Shri Dilbagh Singh were charge sheeted inasmuch as they were found indulging in unauthorised traffic checking with ulterior motive. An enquiry was conducted by the Assistant Commissioner of Police/PCR. Based on the findings of the enquiry report, the applicant and Shri Dilbagh Singh were awarded punishment of temporary forfeiture of one year service vide order dated 20.8.86. The applicant made an appeal against this to the Addl. Commissioner of Police on 25.9.86 (Annexure A-5) and the latter remanded the case back to the disciplinary authority for reconsideration after giving an opportunity of personal hearing to the applicant vide order dated 23.4.87 (Annexure A-6). After giving an opportunity of personal hearing, the applicant was issued with the impugned order dated 13.8.87. He again made an appeal but the appellate authority declined to interfere with the order of punishing authority vide order dated 19.4.88.

The respondents have filed their counter denying the allegations made by the applicant and stating that the enquiry officer rightly came to the conclusion that the applicant stopped the truck with ulterior motive and that he was given full opportunity to defend himself during the course of enquiry and that the punishment imposed was in order.

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We have the learned counsel for the parties and
perused the records.

At Annexure A-1 is the Enquiry Report of the ACP,
wherein he has concluded as follows:

From the prosecution evidence as well as evidence of DWs, it is found that on the night between 4-5.7.85, ASI Vir Singh and Dilbagh Singh were on duty at PCR VanB-72 and while on duty Bagh Singh had stopped truck UTG 9495 and had asked for the papers of the vehicle from the Driver. While checking the papers Inspectors Ram Karan alongwith staff had reached there and had recorded the statement of the Driver and let him off with the truck. No evidence of demanding or accepting the money by the defaulters from the truck driver has come on the file. Suppose we accept the version of the DWs that two persons were sitting in the tool box of the truck and defaulter stopped the truck to remove the said persons from the tool box even then the defaulter had no business to check the papers on the truck. From time to time instructions were issued to PCR staff they should not indulge in traffic checking. ASI Vir Singh, defaulter had also asked Dilbagh Singh not to stop the truck and also to let the driver go. This fact was also confirmed by TI Ram Karan, and ASI Bir Singh was also not found near the truck when it was being checked by Dil Bagh Singh. The part played in this case was of defaulter Dil Bagh Singh for unauthorisedly stopping the truck for checking. No evidence has come on record to prove that Bir Singh had any hand in this checking, rather he had asked Head Constable to refrain from such checking. The ASI may be exonerated in this case. Dil Bagh floated the instructions issued by the senior officer for PCR staff for not to make any traffic checking".

At Annexure A-2 is the show cause notice wherein the DCP has stated that "I have gone through the DE against ASI and HC tentatively agreeing with the finding

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of the EO. I provisionally propose to forfeit one year's service temporarily entailing reduction in pay of ASI Bir Singh".

It is on record that the applicant has preferred an appeal to the Addl. Commissioner of Police and the order dated 13.8.87 at Annexure A-7 says that "the DE was entrusted to Shri Bhagwat Singh ACP/PCR who completed the same and the conclusion that the charge levelled against the ASI and HC stands substantiated".

We are now concerned with the situation where the punishment is imposed without looking into the facts of the case and the disciplinary authority found the applicant guilty and charges substantiated, which is totally of non-application of mind and without proper reason.

It is also brought to our notice by the learned counsel for the applicant that due to this punishment the applicant was not considered for promotion and his juniors have already been promoted.

The learned counsel for the applicant also brought to our notice the judgement delivered by this Hon"ble Tribunal in a case of similar nature bearing OA 953/88 decided on 1st June, 1993 wherein the case of Narayan Misra Vs. State of Orissa 1969 SLR 657 SC has been cited. Para 6 of the judgement reads as follows:

"Now, if the Conservator of Forests intended taking the charges on which he was acquitted into account, it was necessary that the attention of the appellant ought to have been drawn to this fact and his explanation, if any, called for. This does not appear to have been done. In other words, the

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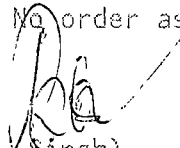
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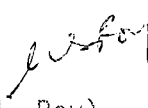
Conservator of Forests used against him the charges of which he was acquitted without warning him that he was going to use them. This is against all principles of fair play and natural justice. If the Conservator of Forests wanted to use them, he should have apprised him of his own attitude and given him an adequate opportunity. Since that opportunity was not given, the order of the Conservator of Forests modified by the State Government can not be upheld. We accordingly set aside the order and remit the case to the Conservator of Forests for dealing with it in accordance with law. If the Conservator of Forests wants to take into account the other two charges, he shall give proper notice to the appellant intimating to him that those charges would also be considered and afford him an opportunity of explaining them"

The Additional Commissioner of Police has rightly written back to the disciplinary authority but he committed the mistake again, which he had done earlier.

Going by the guidelines and law laid down by their Lordships, we find that the disciplinary authority even after the case was remanded back to him followed only the same observation ~~that the charges against the ASI stands substantiated but did~~ *my* *my* that the charges against the ASI stands substantiated but did not give any fresh point. Therefore we find that the punishment imposed on the applicant is in violation of his rights and it is totally against the principles of natural justice and his conclusion is not based on record.

We, therefore, quash and set aside the impugned order dated 13.8.1987. If the applicant is entitled for any consequential benefits, that may be given to him as per rules. No order as to costs.


(B.K. Singh)
Member(A)
24.9.93


(C.J. Roy)
Member (J),
24.9.93